

REFERENCE TITLE: **illegal dumping; penalties**

State of Arizona
House of Representatives
Forty-ninth Legislature
First Regular Session
2009

HB 2424

Introduced by
Representatives McGuire, Barnes, Garcia M, Patterson, Pratt, Senators
Miranda, Rios: Representative Barto, Senator Allen S

AN ACT

**AMENDING SECTIONS 9-499, 11-268 AND 13-1603, ARIZONA REVISED STATUTES;
RELATING TO ILLEGAL DUMPING.**

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 9-499, Arizona Revised Statutes, is amended to read:

9-499. Removal of rubbish, trash, weeds, filth, debris and dilapidated structures: removal by city: costs assessed: collection: priority of assessment: definitions

A. The governing body of a city or town, by ordinance, shall compel the owner, lessee or occupant of property to remove ~~FROM THE PROPERTY AND ITS CONTIGUOUS SIDEWALKS, STREETS AND ALLEYS ANY~~ rubbish, trash, weeds or other accumulation of filth, debris or dilapidated structures ~~which~~ THAT constitute a hazard to public health and safety ~~from buildings, grounds, lots, contiguous sidewalks, streets and alleys~~. An ordinance shall require:

1. Written notice to the owner, the owner's authorized agent or the owner's statutory agent and to the occupant or lessee. The notice shall be served either by personal service or by certified mail. If notice is served by certified mail, the notice shall be mailed to the last known address of the owner, the owner's authorized agent or the owner's statutory agent and to the address to which the tax bill for the property was last mailed. The notice shall be given not less than thirty days before the day set for compliance and shall include the legal description of the property and the cost of such removal to the city or town if the owner, occupant or lessee does not comply. The owner shall be given not less than thirty days to comply. The city or town may record the notice in the county recorder's office in the county in which the property is located. If the notice is recorded and compliance with the notice is subsequently satisfied, the city or town shall record a release of the notice.

2. Provisions for appeal ~~to and a hearing by the governing body of the city or town or a board of citizens that is appointed by the governing body on~~ THAT INCLUDE APPROPRIATE DOCUMENTATION THAT THE RUBBISH, TRASH, FILTH OR DEBRIS IS OF A QUANTITY, NATURE OR SPECIFICITY THAT THE PROPERTY OWNER IS UNLIKELY TO BE THE ORIGINATOR OF THE VIOLATION. Both the notice and the assessments MAY BE APPEALED, unless the removal or abatement is ordered by a court. IF OWNERSHIP OF THE RUBBISH, TRASH, FILTH OR DEBRIS CANNOT BE DETERMINED, ANY CIVIL PENALTY MAY BE WAIVED AND THE PROPERTY OWNER IS RESPONSIBLE FOR ALL REMOVAL.

~~3. That any person, firm or corporation that places any rubbish, trash, filth or debris upon any private or public property not owned or under the control of that person, firm or corporation is guilty of a class 1 misdemeanor or a civil violation and, in addition to any fine or penalty which may be imposed for a violation of any provision of this section, is liable for all costs which may be assessed pursuant to this section for removing, abating or enjoining the rubbish, trash, filth or debris.~~

3. THAT ANY PERSON THAT PLACES OR CAUSES TO BE PLACED ANY RUBBISH, TRASH, FILTH OR DEBRIS ON ANY PROPERTY NOT OWNED OR UNDER THE CONTROL OF THAT PERSON:

(a) IS GUILTY OF A CLASS 1 MISDEMEANOR OR A CIVIL VIOLATION AND SHALL PAY A FINE OR CIVIL PENALTY OF NOT LESS THAN ONE THOUSAND EIGHT HUNDRED DOLLARS. THIS FINE OR CIVIL PENALTY SHALL NOT BE WAIVED OR SUSPENDED. FIFTY PER CENT OF ANY ASSESSED FINE OR CIVIL PENALTY SHALL BE DEPOSITED IN THE GENERAL FUND OF THE CITY OR TOWN IN WHICH THE FINE OR CIVIL PENALTY WAS ASSESSED FOR THE PURPOSES OF ILLEGAL DUMPING CLEANUP.

(b) IN ADDITION TO ANY FINE OR PENALTY IMPOSED FOR A VIOLATION OF THIS SECTION, IS LIABLE FOR ALL COSTS THAT MAY BE ASSESSED PURSUANT TO THIS SECTION FOR REMOVING, ABATING OR ENJOINING THE RUBBISH, TRASH, FILTH OR DEBRIS AND FOR ALL COSTS INCURRED BY THE OWNER, LESSEE, OCCUPANT OR LIENHOLDER OF THE PROPERTY IN THE REMOVAL AND DISPOSAL OF THE RUBBISH, TRASH, FILTH OR DEBRIS.

(c) IF REQUIRED TO REMOVE ANY RUBBISH, TRASH, FILTH OR DEBRIS PURSUANT TO THIS SECTION, SHALL PROVIDE THE CITY OR TOWN WITH A RECEIPT FROM A DISPOSAL FACILITY OR OTHER DOCUMENTATION EVIDENCING LAWFUL DISPOSAL OF THE RUBBISH, TRASH, FILTH OR DEBRIS.

B. ANY PERSON THAT PLACES OR CAUSES TO BE PLACED ANY RUBBISH, TRASH, FILTH OR DEBRIS ON ANY PROPERTY THAT IS NOT OWNED OR UNDER THE CONTROL OF THAT PERSON OR ON ANY STATE TRUST LAND OR FEDERAL LAND AND NOT UNDER THE CONTROL OF THAT PERSON RETAINS OWNERSHIP OF THE RUBBISH, TRASH, FILTH OR DEBRIS UNTIL THE PERSON LAWFULLY DISPOSES OF THE RUBBISH, TRASH, FILTH OR DEBRIS.

~~B.~~ C. The ordinance may provide that if any person with an interest in the property, including an owner, lienholder, lessee or occupant, after notice as required by subsection A, paragraph 1 of this section does not remove ~~such~~ OR CAUSE TO BE REMOVED THE rubbish, trash, weeds, filth, debris or dilapidated structures and abate the condition ~~which~~ THAT constitutes a hazard to public health and safety, the city or town may remove, abate, enjoin or cause their removal.

~~C.~~ D. The governing body of the city or town may prescribe by ordinance a procedure for the removal or abatement, and for making the actual cost of the removal or abatement, including the actual costs of any additional inspection and other incidental connected costs, an assessment ~~upon~~ ON the property from which the rubbish, trash, weeds, STRUCTURES or other accumulations are removed or abated.

~~D.~~ E. The ordinance may provide that the cost of removal, abatement or injunction of ~~such~~ THE rubbish, trash, weeds, filth, debris or dilapidated structures from any ~~lot or tract of land~~ PROPERTY, and associated legal costs for abatement or injunctions, shall be assessed on the property from which the rubbish, trash, weeds, accumulations or dilapidated structures are removed, abated or enjoined. The city or town may record the assessment in the county recorder's office in the county in which the property is located,

1 including the date and amount of the assessment, the legal description of the
 2 property and the name of the city or town imposing the assessment. Any
 3 assessment recorded after July 15, 1996 is prior and superior to all other
 4 liens, obligations, mortgages or other encumbrances, except liens for general
 5 taxes. A sale of the property to satisfy an assessment obtained under ~~the~~
 6 ~~provisions of~~ this section shall be made ~~upon~~ ON judgment of foreclosure and
 7 order of sale. A city or town shall have the right to bring an action to
 8 enforce the assessment in the superior court in the county in which the
 9 property is located at any time after the recording of the assessment, but
 10 failure to enforce the assessment by such action shall not affect its
 11 validity. The recorded assessment shall be prima facie evidence of the truth
 12 of all matters recited in the assessment and of the regularity of all
 13 proceedings ~~prior to~~ BEFORE the recording of the assessment.

14 ~~E.~~ F. Assessments that are imposed under ~~subsection D of~~ this section
 15 run against the property until paid and are due and payable in equal annual
 16 installments as follows:

17 1. Assessments of less than five hundred dollars shall be paid within
 18 one year after the assessment is recorded.

19 2. Assessments of five hundred dollars or more but less than one
 20 thousand dollars shall be paid within two years after the assessment is
 21 recorded.

22 3. Assessments of one thousand dollars or more but less than five
 23 thousand dollars shall be paid within three years after the assessment is
 24 recorded.

25 4. Assessments of five thousand dollars or more but less than ten
 26 thousand dollars shall be paid within six years after the assessment is
 27 recorded.

28 5. Assessments of ten thousand dollars or more shall be paid within
 29 ten years after the assessment is recorded.

30 ~~F.~~ G. An assessment that is past due accrues interest at the rate
 31 prescribed by section 44-1201.

32 ~~G.~~ H. A prior assessment for the purposes provided in this section
 33 shall not be a bar to a subsequent assessment or assessments for these
 34 purposes, and any number of assessments on the same ~~lot or tract of land~~
 35 PROPERTY may be enforced in the same action.

36 ~~H.~~ I. This section applies to all cities and towns organized and
 37 operating under the general law of this state, ~~and~~ and cities and towns
 38 organized and operating under a special act or charter.

39 ~~I.~~ J. For THE purposes of this section:

40 1. "Property" includes ~~buildings, grounds, lots and tracts of land~~
 41 REAL PROPERTY AND STRUCTURES ON THE REAL PROPERTY.

42 2. "Structures" includes buildings, improvements and other structures
 43 that are constructed or placed on land.

1 Sec. 2. Section 11-268, Arizona Revised Statutes, is amended to read:

2 11-268. Removal of rubbish, trash, weeds, filth, debris and
 3 dilapidated buildings; violation; classification;
 4 removal by county; costs assessed; collection;
 5 priority of lien; definitions

6 A. The board of supervisors, by ordinance, shall compel the owner,
 7 lessee or occupant of buildings, grounds or lots located in the
 8 unincorporated areas of the county to remove rubbish, trash, weeds, filth,
 9 debris or dilapidated buildings ~~which~~ THAT constitute a hazard to public
 10 health and safety from buildings, grounds, lots, contiguous sidewalks,
 11 streets and alleys. Any such ordinance shall require and include:

12 1. Reasonable written notice to the owner, any lienholder, ~~THE~~
 13 occupant or ~~THE~~ lessee. The notice shall be given not less than thirty days
 14 before the day set for compliance and shall include the estimated cost to the
 15 county for the removal if the owner, occupant or lessee does not comply. The
 16 notice shall be either personally served or mailed by certified mail to the
 17 owner, occupant or lessee at his last known address, or the address to which
 18 the tax bill for the property was last mailed. If the owner does not reside
 19 on the property, a duplicate notice shall also be sent to the owner at the
 20 owner's last known address.

21 2. Provisions for appeal ~~to the board of supervisors on~~ THAT INCLUDE
 22 APPROPRIATE DOCUMENTATION THAT THE RUBBISH, TRASH, FILTH OR DEBRIS IS OF A
 23 QUANTITY, NATURE OR SPECIFICITY THAT THE PROPERTY OWNER IS UNLIKELY TO BE THE
 24 ORIGINATOR OF THE VIOLATION. Both the notice and the assessments MAY BE
 25 APPEALED. IF OWNERSHIP OF THE RUBBISH, TRASH, FILTH OR DEBRIS CANNOT BE
 26 DETERMINED, ANY CIVIL PENALTY MAY BE WAIVED AND THE PROPERTY OWNER IS
 27 RESPONSIBLE FOR ALL REMOVAL.

28 3. That any person, firm or corporation that places any rubbish,
 29 trash, filth or debris ~~upon~~ ON any private or public property located in the
 30 unincorporated areas of the county not owned or under the control of the
 31 person, firm or corporation:

32 (a) Is guilty of a class 1 misdemeanor and SHALL PAY A FINE OF NOT
 33 LESS THAN ONE THOUSAND EIGHT HUNDRED DOLLARS. FIFTY PER CENT OF ANY ASSESSED
 34 FINE SHALL BE DEPOSITED IN THE SOLID WASTE FEE FUND ESTABLISHED BY SECTION
 35 49-881. ,—

36 (b) In addition to ~~any~~ THE fine ~~which may be~~ THAT IS imposed for a
 37 violation of ~~any provision of~~ this section, is liable for all costs ~~which~~
 38 THAT may be assessed pursuant to this section for the removal of the rubbish,
 39 trash, filth or debris.

40 B. The ordinance may provide that if any person with an interest in
 41 the property, including an owner, lienholder, lessee or occupant of the
 42 buildings, grounds or lots, after notice as required by subsection A,
 43 paragraph 1 OF THIS SECTION, does not remove the rubbish, trash, weeds,
 44 filth, debris or dilapidated buildings and abate the condition ~~which~~ THAT
 45 constitutes a hazard to public health and safety, the county ~~may~~, at the

1 expense of the owner, lessee or occupant, MAY remove, abate, enjoin or cause
2 the removal of the rubbish, trash, weeds, filth, debris or dilapidated
3 buildings.

4 C. The board of supervisors may prescribe by the ordinance a procedure
5 for such removal or abatement and for making the actual cost of such removal
6 or abatement, including the actual costs of any additional inspection and
7 other incidental costs in connection with the removal or abatement, an
8 assessment ~~upon~~ ON the lots and tracts of land from which the rubbish, trash,
9 weeds, filth, debris or dilapidated buildings are removed.

10 D. The ordinance may provide that the cost of removal, abatement or
11 injunction of the rubbish, trash, weeds, filth, debris or dilapidated
12 buildings from any lot or tract of land located in the unincorporated areas
13 of the county and associated legal costs be assessed in the manner and form
14 prescribed by ordinance of the county ~~upon~~ ON the property from which the
15 rubbish, trash, weeds, filth, debris or dilapidated buildings are removed,
16 abated or enjoined. The county shall record the assessment in the county
17 recorder's office in the county in which the property is located, including
18 the date and amount of the assessment and the legal description of the
19 property. Any assessment recorded after ~~the effective date of this amendment~~
20 ~~to this section~~ AUGUST 6, 1999 is prior and superior to all other liens,
21 obligations or other encumbrances, except liens for general taxes and prior
22 recorded mortgages. A sale of the property to satisfy an assessment obtained
23 under this section shall be made on judgment of foreclosure and order of
24 sale. The county may bring an action to enforce the lien in the superior
25 court in the county in which the property is located at any time after the
26 recording of the assessment, but failure to enforce the lien by such action
27 does not affect its validity. The recorded assessment is prima facie
28 evidence of the truth of all matters recited in the assessment and of the
29 regularity of all proceedings before the recording of the assessment.

30 E. Assessments that are imposed under subsection D OF THIS SECTION run
31 against the property until they are paid and are due and payable in equal
32 annual installments as follows:

33 1. Assessments of less than five hundred dollars shall be paid within
34 one year after the assessment is recorded.

35 2. Assessments of five hundred dollars or more but less than one
36 thousand dollars shall be paid within two years after the assessment is
37 recorded.

38 3. Assessments of one thousand dollars or more but less than five
39 thousand dollars shall be paid within three years after the assessment is
40 recorded.

41 4. Assessments of five thousand dollars or more but less than ten
42 thousand dollars shall be paid within six years after the assessment is
43 recorded.

44 5. Assessments of ten thousand dollars or more shall be paid within
45 ten years after the assessment is recorded.

F. A prior assessment for the purposes provided in this section is not a bar to a subsequent assessment or assessments for such purposes, and any number of liens on the same lot or tract of land may be enforced in the same action.

G. Before the removal of a dilapidated building the board of supervisors shall consult with the state historic preservation officer to determine if the building is of historical value.

H. If a county removes a dilapidated building pursuant to this section, the county assessor shall adjust the valuation of the property on the property assessment tax rolls from the date of removal.

I. IF A PERSON, FIRM OR CORPORATION IS REQUIRED TO REMOVE ANY RUBBISH, TRASH, FILTH OR DEBRIS PURSUANT TO SUBSECTION A, PARAGRAPH 3 OF THIS SECTION, THE PERSON, FIRM OR CORPORATION SHALL PROVIDE THE COUNTY WITH A RECEIPT FROM A DISPOSAL FACILITY TO INDICATE THAT THE RUBBISH, TRASH, FILTH OR DEBRIS HAS BEEN DISPOSED OF AS REQUIRED BY LAW.

~~I. As used in this section occupant does not include any corporation or association operating or maintaining rights-of-way for and on behalf of the United States government, either under contract or under federal law.~~

J. ~~As used in~~ FOR THE PURPOSES OF this section: ,—

1. "Dilapidated building" means any real property structure that is in such disrepair or is damaged to the extent that its strength or stability is substantially less than a new building or it is likely to burn or collapse and its condition endangers the life, health, safety or property of the public.

2. "OCCUPANT" DOES NOT INCLUDE ANY CORPORATION OR ASSOCIATION OPERATING OR MAINTAINING RIGHTS-OF-WAY FOR AND ON BEHALF OF THE UNITED STATES GOVERNMENT, EITHER UNDER CONTRACT OR UNDER FEDERAL LAW.

Sec. 3. Section 13-1603, Arizona Revised Statutes, is amended to read:
13-1603. Criminal littering or polluting; classification

A. A person commits criminal littering or polluting if ~~such~~ THE person without lawful authority does any of the following:

1. Throws, places, drops or permits to be dropped on public property or property of another ~~which~~ THAT is not a lawful dump any litter, destructive or injurious material ~~which he~~ THAT THE PERSON does not immediately remove.

2. Discharges or permits to be discharged any sewage, oil products or other harmful substances into any waters or onto any shorelines within ~~the~~ THIS state.

3. Dumps any earth, soil, stones, ores or minerals on any land.

B. Criminal littering or polluting is ~~punished~~ PUNISHABLE as follows:

1. A class 6 felony if THE ACT IS a knowing violation of subsection A in which the amount of litter or other prohibited material or substance exceeds three hundred pounds in weight or one hundred cubic feet in volume or is done in any quantity for a commercial purpose.

1 2. A CLASS 1 MISDEMEANOR IF THE ACT IS A KNOWING VIOLATION OF
2 SUBSECTION A, PARAGRAPH 1 IN WHICH THE AMOUNT OF LITTER OR PROHIBITED
3 MATERIAL OR SUBSTANCE IS THREE HUNDRED POUNDS OR LESS IN WEIGHT OR ONE
4 HUNDRED CUBIC FEET OR LESS IN VOLUME AND IS NOT DONE FOR A COMMERCIAL
5 PURPOSE.

6 ~~2.~~ 3. A class 1 misdemeanor if the act is not punishable under
7 paragraph 1 of this subsection and involves placing any destructive or
8 injurious material on or within fifty feet of a highway, beach or shoreline
9 of any body of water used by the public.

10 ~~3.~~ 4. A class 2 misdemeanor if THE ACT IS not punishable under
11 paragraph 1, ~~or~~ 2 OR 3 of this subsection.

12 C. A VIOLATION OF SUBSECTION A, PARAGRAPH 1 OR 2 IS PUNISHABLE BY A
13 FINE OF NOT LESS THAT TWO THOUSAND FIVE HUNDRED DOLLARS, AND THE FINE SHALL
14 NOT BE WAIVED OR SUSPENDED. FIFTY PER CENT OF ANY ASSESSED FINE SHALL BE
15 DEPOSITED IN THE GENERAL FUND OF THE COUNTY IN WHICH THE FINE WAS ASSESSED
16 FOR THE PURPOSES OF ILLEGAL DUMPING CLEANUP.